

United States District Court
District of Montana
Helena Division

JAN 09 2017

Clerk, U.S. Courts
District of Montana
Helena Division

Case No.

FREEMAN WILLIAM STANTON,
PETITIONER,

-VS-

LEROY KIRKEGARD, WARDEN
OF MONTANA STATE PRISON
RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS

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MONTANA SUPREME COURT
CLERK OF THE COURT
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HELENA, MT 59620-3003

JURISDICTION

Pursuant to 28 U.S.C. §2241, this Court has jurisdiction to entertain a State prisoner's Habeas Corpus Petition under 28 U.S.C. §2254 for a Writ Of Habeas Corpus¹¹

STANDARD

The purpose of the Writ Of Habeas Corpus is "to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint".

ISSUES PRESENTED FOR REVIEW

- 1¹¹ WHETHER OR NOT THE PETITIONER IS ENTITLED TO RELIEF SINCE THE DISCOVERY OF "NEWLY DISCOVERED EVIDENCE" REGARDING THE PETITIONERS PHYSICAL AND MENTAL IMPAIRMENTS WERE NOT KNOWN TO THE STATE OR THE PETITIONER AND HIS COUNSEL AT THE TIME OF SENTENCING.
2. WHETHER OR NOT THE PETITIONER IS ENTITLED TO RELIEF REGARDING THE INADEQUACY OF HIS PLEA BARGAIN DUE TO THE NEWLY DISCOVERED EVIDENCE SURROUNDING HIS HISTORY OF PHYSICAL AND MENTAL IMPAIRMENTS UNKNOWN TO HIM OR THE STATE AT THE TIME OF SENTENCING.

1. PETITION FOR WRIT OF HABEAS CORPUS

- 1 3. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE ALL SENTENCES
2 ORDERED TO RUN "CONCURRENT" SINCE NO MENTION OF "CONCURRENT" OR
3 "CONSECUTIVE" SENTENCES WERE EVEN MENTIONED IN HIS PLEA AGREE-
4 MENT OFFER.
- 5 4. WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE HIS "NO PAROLE"
6 STIPULATION REMOVED AFTER 34 YEARS OF INCARCERATION SINCE THE
7 MONTANA SUPREME COURT JUST RECENTLY REMANDED HIS CASE BACK TO
8 THE DISTRICT COURT AND ORDERED THE COURT TO REMOVE THE 100 YEAR
9 CONSECUTIVE SENTENCE FOR PFO (PERSISTENT FELONY OFFENDER).

10 STATEMENT OF CASE

11 Petitioner was charged by information on May 6, 1982, for the
12 following charges:

13 Count I: Robbery, a violation of Section §45-5-401(1)(b), MCA, 1981.

14 Count II: Aggravated Kidnapping, a violation of Section §45-5-303
15 (1)(a), MCA, 1981.

16 Count III: Sexual Intercourse Without Consent, a violation of
17 Section §45-5-503(1), MCA, 1981.

18 Count IV: Attempted Deliberate Homicide, a violation of Section
19 §45-4-103(1)(a), MCA, 1981.

20 Count V: Theft, a violation of Section §45-6-301(1)(a), MCA, 1981.

21 STATEMENT OF FACTS

22 On June 21, 1982, the Petitioner was sentenced to the following
23

24 2. PETITION FOR WRIT OF HABEAS CORPUS
25

1 years for the charges mentioned supra in the Information:

2 Count I: Robbery, forty (40) years, Montana State Prison

3 Count II: Aggravated Kidnapping, One Hundred (100) years, Montana
State Prison

4 Count III: Sexual Intercourse Without Consent, forty (40) years,
5 Montana State Prison.

6 Count IV: Attempted Deliberate Homicide, One Hundred (100) years,
Montana State Prison.

7 Count V: Theft, Ten (10) years, Montana State Prison.

8 All sentences were Ordered to run "consecutively". Finally,
9 the Petitioner was sentenced to an additional One Hundred (100)
10 years as a "Persistent Felony Offender" to run "consecutive" to
11 the five consecutive sentences supra.

12 The Petitioner filed a Writ Of Habeas Corpus in the Montana
13 Supreme Court challenging the legality of his One Hundred (100)
14 Year sentence designation as a "Persistent Felony Offender". The
15 Montana Supreme Court granted Petitioner's Writ Of Habeas Corpus
16 in part and Ordered the Second Judicial District Court to enter
17 an Amended Judgement, striking the portion of the sentence that
18 imposes upon the Petitioner a Persistent Felony Offender status
19 and an associated prison sentence "for an additional term of One-
20 Hundred (100) years". See Exhibit "A" attached hereto. This Order
21 was ordered on September 6, 2016.

22 On September 27, 2016, the Second Judicial District Court Ordered
23 the Amended Judgement. See Exhibit "B" attached hereto.

24 The Court also stipulated in Petitioner's original Sentencing

25 3. PETITION FOR WRIT OF HABEAS CORPUS

1 and Judgement Order that the Petitioner be designated a "dangerous
2 offender" contrary to Petitioner's original Plea Agreement which
3 will be reflected infra.

4 In addition¹¹ the Sentencing Court also stipulated the Peti-
5 tioner be ineligible for parole. See Exhibit "C" attached hereto.
6 Every aspect of the Petitioner's Sentencing & Judgement Order are
7 contrary to Petitioner's Plea Agreement. These issues will also
8 be addressed in the Argument of this Petition infra. See Exhibit
9 "D" attached hereto.

10 11 ARGUMENT

12 Petitioner presents a prima facie case in the Petition For
13 Writ Of Habeas Corpus containing prima facie evidence good and
14 sufficient on its face.

15 Such evidence as, in the judgement of the law, is sufficient
16 to establish a given fact, or the group or chain of facts con-
17 stituting the Petitioner's claim or defense, and which if not,
18 rebutted or contradicted, will remain sufficient.

19 Such evidence is sufficient to sustain a judgement in favor
20 of the issue which it supports. Once a trier of fact is faced
21 with conflicting evidence, it must weigh the prima facie evidence
22 with all the other probative evidence that was presented.

23 In the instant case, the Petitioner suffered from mental and
24 physical impairments unknown to him until recently which will

25 4. PETITION FOR WRIT OF HABEAS CORPUS

1 be supported with Exhibits herein infra.

2 Evidence of mental disease or defect or developmental dis-
3 ability is admissible to prove state of mind pursuant to §46-14-
4 102, MCA. If the Petitioner suffered from a mental disease or
5 developmental disability, then this evidence should be admiss-
6 able in order to prove that the Petitioner did or did not have
7 a state of mind that is an element of the offenses he committed.

8 All of the newly discovered evidence regarding the relevance
9 of mental disease or defect is in fact "relevant evidence."

10 Relevancy evidence is evidence having any tendency to make the
11 existence of any fact that is of consequence to the determina-
12 tion of the action more probable or less probable than it would
13 be without the evidence.

14 All relevant evidence is admissible, except as otherwise pro-
15 vided by constitution, statute, or other Rules applicable in the
16 Court's of the State!

17 Petitioner will be introducing his newly discovered evidence
18 infra pursuant to M.R.Ev., Rule 1004. The newly discovered evi-
19 dence regarding the Petitioner's physical & mental impairments
20 are the copies of the original documents by school psychologist's
21 when he was in public school and by professional psychologist's
22 and medical consultants of the United States Air Force all of
23 which were just recently discovered. This evidence is also in
24 accordance with M.R.Ev., Rule 1005.

25 5. PETITION FOR WRIT OF HABEAS CORPUS

1 Had these newly discovered evidence documents been available
2 at Petitioner's plea bargain phase of his trial, as well as his
3 sentencing phase, it is clearly evident that there would have
4 been a completely different outcome, i.e., length of sentences.

5 Pursuant to §46-14-311, MCA, none of these considerations were
6 taken into account because this crucial evidence was not avail-
7 able at the time. The capacity of the Petitioner to appreciate
8 the criminality of the Petitioner's conduct or to conform the
9 Petitioner's conduct to the requirements of law was substantially
10 impaired, §46-18-304, MCA.

11 Petitioner asserts that this present case with newly discovered
12 evidence is proper for reopening and addressing the issues pre-
13 sented in this Writ. Because this newly discovered evidence was
14 never available to the Petitioner, some of which was actually
15 hidden from him until the United State Air Force medical consult-
16 ants discovered negligence and/or malice regarding physical and
17 mental impairments, this should entitle the Petitioner to a re-
18 opening of his case under newly discovered evidence provision of
19 Rule 60(b), M.R.Civ.P. See Nicholson v. Cannon, 207 M 476, 674
20 P.2d 506, 41 St. Rep. (1984).

21 The Ninth Circuit has recognized that a learning disability
22 can constitute a disability under the ADA's definition. Other
23 Court's, in conducting individualized inquiries, have assessed
24 the degree to which a mental impairment someone's ability to learn

25 6. PETITION FOR WRIT OF HABEAS CORPUS

1 or work.

2 it is clearly evident that the Petitioner suffered from major
3 mental impairments during his time in school as a child and teen-
4 ager. Had the Petitioner been aware of these psychological tests
5 there is the very good possibility that he could and would have
6 conveyed this information to his defense counsel so that his coun-
7 sel could have motioned the Court for the appropriate psycholog-
8 ical examinations which is his constitutional right. See Exhibit
9 "E" attached hereto.

10 Petitioner was totally unaware of his mental disabilities until
11 he attempted and acquired his application for his military record
12 regarding an unrelated matter surrounding the status of his military
13 service through the VA (Veterans Administration.) See Exhibit "F"
14 attached hereto. Specifically, page 2, ¶2, and page 3, ¶3.

15 According to the Federal Regulations promulgated under the ADA
16 indicate that mental impairments include "any mental or psycholog-
17 ical disorder such as mental retardation, organic brain syndrome,
18 emotional or mental illness, and specific learning disabilities."

19 The Ninth Circuit has recognized that a learning disability
20 can constitute a disability under the ADA's definition. See Zukle
21 v. Regents of Univ. of California, 166 F.3d 1041, 1046 (9 Cir 1999).
22 See Exhibit "G" attached hereto.

23 Also, the 2008 EEOC regulations similarly defined "physical or
24 mental impairments" as: Any mental or psychological disorder, such
25 as disabilities. 29 C.F.R. §1630.2(h) (2008). Again, See Exhibit "G".

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1 Evidence is material only if it is offered to prove or dis-
2 prove an element of a legally cognizable claim, offense, or de-
3 fense that has been raised in the parties pleadings. The Peti-
4 tioner has in fact raised a cognizable claim regarding the newly
5 discovered evidence surrounding his mental disabilities and any
6 reasonable capabilities of deciding what "is" and "is not" the
7 right decision in making an intelligent and competent decision
8 during his plea negotiations.

9 M.R.Evi., Rule 401(a) provides that evidence is relevant if
10 "it has any tendency to make a fact more or less probable than
11 it would be without the evidence."

12 Under Rule 401, the evidence need not be sufficient to be ad-
13 missable; it need only have some tendency, however slight, to
14 support the party's claim with respect to that element.

15 If a party opposes the admission of an item of conditionally
16 relevant evidence that has been admitted subject to subsequent
17 proof of the conditions of fault, it is the responsibility of
18 that party to move to strike the evidence if the proponent of
19 the evidence fails to introduce the promised evidence.

20 As with relevance generally, the fact that an inference is
21 weak in that the evidence can be interpreted in multiple ways¹¹
22 some consistent with the evidentiary hypothesis of the proponent
23 of the evidence and others inconsistent with the hypothesis,
24 bears only of the weight to be given to the evidence and does

25 8. PETITION FOR WRIT OF HABEAS CORPUS

1 not bear on its relevance. See United States v. Carmona, 873 F.2d
2 569, 572, (2d Cir. 1989.)

3 In stark contrast to Rule 404's general declaration that evi-
4 dence of a person's character is not admissible to prove action
5 in conformity therewith, Rule 406 states that evidence of an in-
6 dividual's "habit" or an organization's routine practice is potent-
7 ially admissible to prove action in conformity therewith (subject,
8 of course, like virtually all other evidence, to exclusion under
9 Rule 403.)

10 petitioner in this current case had no previous "trait or habit"
11 regarding any kind of sexual assault or otherwise. In fact, due to
12 Petitioner's most recent discovery of his psychological and mental
13 disorders unknown to him at the time of his crime and plea bargain
14 discussions under newly discovered evidence reflected in Exhibit's
15 "E", "F", and "G", Petitioner obviously had no known previous traits
16 or unusual habits regarding any type of sexual assault behavior.

17 Circumstances surrounding his crimes and the lack of appropriate
18 procedures by his counsel (as well as the State), i.e., psycholo-
19 gical evaluations, investigation into Petitioner's previous mental
20 disabilities, will be discussed infra.

21 ISSUE TWO: WHETHER OR NOT THE PETITIONER IS ENTITLED TO
22 RELIEF REGARDING THE INADEQUACY OF HIS PLEA BARGAIN DUE TO
23 THE NEWLY DISCOVERED EVIDENCE SURROUNDING HIS HISTORY OF
24 PHYSICAL AND MENTAL IMPAIRMENTS UNKNOWN TO HIM OR THE STATE
25 AT THE TIME OF SENTENCING

9. PETITION FOR WRIT OF HABEAS CORPUS

1 For a variety of reasons, mostly expediency, most criminal
2 cases are resolved by the plea bargaining mechanisms under which
3 the defendant pleads guilty to one or more charges in exchange for
4 some concession from the prosecution.

5 A plea bargain is a process of give and take; if the defendant
6 is free to accept or reject the plea bargaining agreement without
7 fear "of punishment or retaliation," the plea is voluntary.

8 A plea of guilty is a grave and solemn act to be accepted only
9 with care and discernment and has long been recognized as so.

10 Central to the plea and foundation for entering judgement against
11 the defendant is the defendant's admission in open court that he
12 committed the acts charged in the indictment, hence the minimum re-
13 quirement that his plea be the voluntary expression of his own
14 choice.

15 The plea is more than an admission of past conduct; it is the
16 defendant's consent that judgement of conviction may be entered
17 as in this case, without a trial. a waiver of his right to trial,
18 before a jury or a judge.

19 Waivers of constitutional rights not only must be voluntary but
20 must be knowing, intelligent acts done with sufficient "awareness"
21 of the relevant circumstances and likely consequences. See Brady
22 v. United States, 397 U.S. 742, 90 S.Ct. 1463, L.Ed. 25 747 (1970)

23 The Petitioner specifically expressed to his counsel prior to
24 any plea agreement process that he did in fact have mental impair-

25 10. PETITION FOR WRIT OF HABEAS CORPUS

1 ment issues starting with special education problems in school
2 as a young person. Petitioner did not realize the severity of the
3 possibility of more or "unknown" mental impairments and defects
4 until recently under newly discovered evidence reflected in Exhibits
5 "E", "F", and "G", attached hereto.

6 Petitioner's counsel was negligent in his duties by failing to
7 appropriately investigate and motion the Court for appropriate
8 psychological evaluations. By doing so, the counsel for the Pe-
9 titioner would have at the very least been exposed to the actual
10 school psychological reports reflected in Exhibit "E".

11 Obviously, Petitioners counsel had no way of knowing about the
12 Petitioners psychological reports in Petitioners application for
13 his military record in Exhibit "F". However, it does not take away
14 from the fact that there is revealing newly discovered evidence
15 that more than likely had a significant impact on the decision
16 making by the Petitioner during the initial plea bargaining pro-
17 cess.

18 Counsel's failure to pursue the possibility of establishing
19 the Petitioner's mental impairment and/or defect constituted in-
20 effective assistance. See Evans v. Lewis, 855 F2d 631, 636-39
21 (9th Cir. 1988.)

22 In Petitioner's Acknowledge Of waiver Of Rights By Plea Of
23 Guilty, Petitioner agreed to lesser charges than what he was
24 actually sentenced to. See Exhibit "C" ttached hereto.

25 **11. PETITION FOR WRIT OF HABEAS CORPUS**

1 Clearly, on page 1, ¶2, Petitioner acknowledges that he will
2 be charged with "Kidnapping" instead of "Aggravated Kidnapping"
3 and, "Sexual Assault" instead of "Sexual Intercourse Without Con-
4 sent."

5 Petitioner was in fact deceived by the State in these agreed
6 upon plea negotiations. By definition alone, this was a breach
7 of contract by the State and the County Attorney.

8 The determination of whether or not an agreement has been breached
9 is governed by the law of contracts, with some exceptions. Due pro-
10 cess requires that any ambiguity be construed against the govern-
11 ment and in accordance with the defendant's reasonable understand-
12 ing of the agreement.

13 A defendant who alleges that the government breached a plea
14 agreement may be entitled to an evidentiary hearing or, at the
15 Court's discretion, discovery or expansion of the record. See Black-
16 ledge v. Allison, 431 US 63, 76, 80-82 (1977.)

17 By the actions of the State in their "breach of the contract"
18 surrounding the plea bargaining process, the exhibited nothing less
19 than "vindictive prosecution." The Due Process Clause prohibits a
20 prosecutor from using criminal charges vindictively in an attempt
21 to penalize a defendant's valid exercise of constitutional or
22 statutory rights. The Supreme Court has held that due process is
23 offended by the possibility that "increased punishment" poses a
24 "realistic likelihood of vindictiveness."

25 12. PETITION FOR WRIT OF HABEAS CORPUS

1 On March 8, 2012, the United States Supreme Court set new stan-
2 dards for criminal plea bargains which should apply to the Peti-
3 tioner in this case "retroactively" due to the newly discovered
4 evidence mentioned supra.

5 Under these new standards, plea negotiations between criminals
6 and prosecutors will now come under constitutional scrutiny because
7 a divided Supreme Court ruled that convictions can be overturned
8 if defense lawyers don't adequately assist clients in deciding
9 whether to accept such offers.

10 The Court went on to say that the Court now elevates plea bar-
11 gaining from a necessary evil to a constitutional entitlement. The
12 right to counsel is the right to effective assistance of counsel.

13 The Supreme Court now holds that, as a general rule, defense
14 counsel has the duty to communicate fromal offers from the pro-
15 secution to accept a plea on terms and conditions that may be favor-
16 able to the accused. When the defense counsel allows the offer
17 to expire and/or alter without advising the defendant or allowing
18 him to consider it, defense counsel did not render the effective
19 assistance the Constitution requires.

20 In the instant case, the Petitioner agreed only to the charges
21 reflected in Exhibit "C". The State deceived the Petitioner by
22 not adhering to its original plea agreement and subsequently did
23 in fact "enhance" Petitioner's plea agreement by and through vin-
24 dictive prosecution and breach of contract.

25 13. PETITION FOR WRIT OF HABEAS CORPUS

1 If the State denies a defendant the right to his agreed upon
2 plea agreement, then it is clearly evident that prejudice can be
3 shown. In this case, the State denied the Petitioner his constitu-
4 tional right tp an agreed upon plea bargain.

5 The illegal actions of the State denying the Petitioner his con-
6 stitutional right to a plea bargain that is reflected in Exhibit
7 "C", is not giving the Petitioner/Defendant the benefit of agreed
8 upon favorable deal, was in fact a deliberate deception by the
9 State to secure an unlawful advantage.

10 Petitioner's original plea negotiations regarding §46-12-204(2)
11 and (3), MCA, (Plea Alternatives), reflects that the plea is vol-
12 untary and not the result of force or threats or promises apart
13 from the plea agreement.

14 Since the recent discovery of Petitioner's newly discovered
15 evidence regarding his previous mental impairments and/or defects,
16 the Court, prosecutor, as well as the Petitioner's counsel at that
17 time, no one is actually capable of determining whether or not the
18 Petitioner made a knowledgeable and voluntary plea during his plea
19 negotiations since no investigation, psychological or otherwise,
20 was ever conducted let alone motioned for by Petitioner's counsel.

21 §46-12-210, MCA, (Advice to defendant), reflects that the de-
22 fendant shall be determined by the Court whether or not he under-
23 stands the nature of the charge for which the plea was offered.

24 All the Petitioner understood was that he was pleading guilty

25 14. PETITION FOR WRIT OF HABEAS CORPUS

1 to the charges (on the advice of his counsel) reflected in Exhibit
2 "C" which was suppose to include two (2) lesser included charges.
3 i.e., Sexual Intercourse Without Consent reduced to Sexual Assault
4 and, Aggravated Kidnapping reduced to Kidnapping which never even
5 happened because the State deceived the Petitioner and "did not"
6 reduce those two (2) charges as indicated in Exhibit "C".

7 The words of a statute are what the legislature has enacted as
8 law, and all that it has the power to enact. Unenacted intentions
9 or wishes cannot be given effect as law.

10 It is a rule of statutory construction that, if reasonably pra-
11 cticable, words used in one place in a statute with a plain meaning
12 are given the same meaning when found in other parts of the same
13 statute to the end that there may be a harmonious and consistent
14 body of law.

15 When the State failed to abide by their offer of Sexual Assault
16 and Kidnapping as indicated in Petitioner's plea agreement of Exhibit
17 "C", they violated the statutory intent of §46-12-211(1)(b), MCA,
18 thereby denying the Petitioner his Due Process Clause of the United
19 States Constitution as well as the Montana Constitution. It is para-
20 mount that Court give such construction to a statute as will pre-
21 serve constitutional rights of parties.

22 Under Montana Law, if interpretation of statute can be accomp-
23 lished from plain meaning of words used, the Court may not apply
24 other means of interpretation.

25 15. PETITION FOR WRIT OF HABEAS CORPUS

1 When a lawyer advises his client to plea bargain to an offense
2 which the attorney has not investigated (as in Petitioner's case),
3 such conduct is always unreasonable. Petitioner's counsel failed
4 in his duties to investigate anything whaysoever. See Woodard v.
5 Collins, 898 F.2d 1027, 1029 (5th Cir. 1990).

6 A Court cannot accept a guilty plea from an individual that is
7 mentally incompetent; failure to investigate competency is pre-
8 judicial if there is a reasonable probability that the defendant
9 was incompetent to plead guilty. See Bouchillon v. Collins, 907
10 F.2d 589, 592 (5th Cir. 1990).

11 In Evans v. Lewis, 855 F.2d 631, 636-39 (9th Cir. 1988). The
12 Court stated that counsel's failure to pursue the possibility of
13 establishing the defendant's mental instability constituted in-
14 effective assistance.

15 A prosecutor violates due process when he seeks additional
16 charges solely to punish a defendant for exercising a constitu-
17 tional or statutory right. The prosecutor not only punished the Pet-
18 itioner but, deceived him as well when he did not adhere to the
19 original plea agreement. Specifically, the two(2) lesser included
20 charges (Sexual Assault & Kidnapping.)

21 Where it is clear that the government violated the terms of a
22 plea agreement, the defendant is typically given the option of
23 withdrawing his guilty plea or demanding a specific performance.
24 see U.S. v. Goings, 200 F3d 539 (8th Cir. 2000)

25 16. PETITION FOR WRIT OF HABEAS CORPUS

1 Even the Attorney General stated in his Response To Petitioner's
2 Writ Of Habeas corpus in the Montana Supreme Court that the Peti-
3 tioner "was not" competent to enter his pleas as a result of his
4 mental deficiencies and did not request to withdraw his guilty pleas.

5 Petitioner did not request to withdraw his guilty pleas because
6 he still suffers from the same mental deficiencies he has had his
7 entire life without even knowing or being aware of these deficiencies
8 until recently as indicated in the attached Exhibits. See Exhibit
9 "H" attached hereto.

10 In addition, in the Order from the Montana Supreme Court dated
11 August 17, 2004, the Court stated that the Petitioner could have
12 brought up the plea agreement regarding the two (2) lesser included
13 charges of Sexual Assault & Kidnapping on appeal. Again, Petitioner
14 did not receive effective assistance from his counsel regarding
15 any kind of appellate issues. See Exhibit "I" attached hereto.

16 ISSUE THREE:

17 WHETHER OR NOT THE PETITIONER IS ENTITLED TO HAVE ALL SENTENCES
18 ORDERED TO RUN "CONCURRENT" SINCE NO MENTION OF "CONCURRENT" OR
19 "CONSECUTIVE" SENTENCES WERE EVER EVEN MENTIONED IN HIS PLEA AGREE-
20 MENT OFFER.

21 If a plea bargain has been offered, a defendant has the right
22 to effective assistance of counsel in considering whether to acc-
23 ept it. If that right is denied, prejudice can be shown if loss
24 of the plea opportunity led to a trial resulting in a conviction

25 17. PETITION FOR WRIT OF HABEAS CORPUS

1 on more serious charges or the imposition of a more severe sen-
2 tence.

3 This is exactly what happened to the Petitioner in his plea
4 bargaining process by and through his counsel and the State pro-
5 secutor. As Exhibit "C" clearly reflects, the Petitioner agreed
6 to plead guilty to "Kidnapping" instead of "Aggravated Kidnapping"
7 and "Sexual Assault" instead of "Sexual Intercourse Without Con-
8 sent."

9 Instead, Petitioner's counsel and the State prosecutor completely
10 disregarded Petitioner's agreed upon plea bargain and deceived the
11 Petitioner by moving forward with the original charges in the in-
12 dictment. Exhibit "D" (Petitioner's Judgement And Order Of Comm-
13 itment) clearly reflects what the Petitioner was subsequently
14 sentenced to as well as the charges he was sentenced to "contrary"
15 to Petitioner's agreed upon plea agreement.

16 In Strickland v. Washington, a two (2) part test of effective
17 assistance of defense counsel held (1) reasonably effective assis-
18 tance and (2) reasonable probability of a different result with
19 effective assistance would have occurred. Had Petitioner's counsel
20 been effective during plea negotiations, he would have intervened
21 and demanded that the State prosecutor adhere to the original plea
22 bargain and let the Court decide whether or not to accept the plea
23 offer by the State.

24 A defendant's Sixth Amendment right to counsel includes the

25 18. PETITION FOR WRIT OF HABEAS CORPUS

1 right to be represented by an attorney with undivided loyalty.

2 See Lockhart v. Terhune, 250 F.3d 1223 ((th Cir. 2001)

3 In addition, there was no mention made whatsoever in Petitioner's
4 plea bargain regarding whether or not all of the sentences would
5 run concurrent or consecutive.

6 ISSUE FOUR:

7 WHETHER OR NOT PETITIONER IS ENTITLED TO HAVE HIS "NO PAROLE"
8 STIPULATION REMOVED AFTER 34 YEARS OF INCARCERATION SINCE THE MON-
9 TANA SUPREME COURT JUST RECENTLY REMANDED HIS CASE BACK TO THE
10 DISTRICT COURT TO REMOVE THE 100 YEAR CONSECUTIVE SENTENCE FOR PFO.

11 Petitioner asserts that he is entitled to the Court's consider-
12 ation in having his "No Parole" stipulation removed since there
13 was never an indication and/or mention whether or not the Peti-
14 tioner's sentences were to run "concurrent" or "consecutive." The
15 Petitioner is now a 63 year old male with physical and mental im-
16 pairments who has already served almost 35 years in the Montana
17 State Prison. His request for relief and/or alternatives will be
18 mentioned infra in his Conclusion.

19 CONSLUSION

20
21 Pursuant to all of the evidence presented supra in Petitioner's
22 Writ Of Habeas Corpus, including the admission of the Attorney
23 General's response in Petitioner's Writ Of Habeas Corpus in the
24 Montana Supreme Court, i.e., his admission stating that the Peti-

25 19. PETITION FOR WRIT OF HABEAS CORPUS

- Dated this 5th day of January, 2017.

20. PETITION FOR WRIT OF HABEAS CORPUS

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court will grant relief to which he is entitled to by whatever means this Court deems appropriate.

Dated this 5th day of January, 2017.

Freeman William Stanton

Freeman William Stanton
Petitioner Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the person(s) named below by forwarding them a true and correct copy, postage prepaid, of said document:

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P.O. Box 203003
Helena, MT 59620-3003

Dated this 5th day of January, 2017.

Freeman William Stanton

Freeman William Stanton
Petitioner Pro Se

21. PETITION FOR WRIT OF HABEAS CORPUS